

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ATTACHMENT NO. A TO RESOLUTION _____

MUTUAL RELEASE AND COVENANT NOT TO SUE
FOR
CHACON'S AUTO CLINIC PROPERTY, UST CASE # 450122
CITY OF SHASTA LAKE
SHASTA COUNTY

I. INTRODUCTION

THIS MUTUAL RELEASE AND COVENANT NOT TO SUE (hereafter "Mutual Release") is provided in response to a request by the City of Shasta Lake Redevelopment Agency and pursuant to Central Valley Regional Water Quality Control Board (hereafter "Central Valley Water Board" or "Board") Resolution _____ (hereafter "Resolution") authorizing its Executive Officer to negotiate and sign the Mutual Release concerning the Chacon's Auto Clinic Property, UST Case # 450122, located at 4657 Shasta Dam Blvd, City of Shasta Lake (the "Property"), which is more particularly described in Attachment B to the Resolution.

The Central Valley Water Board understands that the City of Shasta Lake Redevelopment Agency (hereafter "City") will be expending funds for cleanup and will be seeking from the State Water Resources Control Board reimbursement from the Underground Storage Tank Cleanup Fund (USTCF Claim #13783) to undertake investigation and remedial activities on the Property. The City is not a current or past owner or operator on the Property or otherwise a discharger legally required to conduct investigation of remedial activities on the Property, nor has the City negotiated an assignment of the USTCF claim. However, the City has entered into an agreement with the current claimant to act "on behalf" of that claimant and be reimbursed for funds expended by the City in the cleanup effort (the "Agreement"). In addition, the City plans to purchase or otherwise accept a deed for ownership of the property after the cleanup and mitigation work is complete. The City is concerned that by exercising control of the Property and by expending USTCF funds it could face potential environmental liability. The City desires a commitment, to the maximum extent permitted by law, that it, as well as all of its directors, officers, employees, partners, affiliates, and agents, (individually a "Released Party" and collectively the "Released Parties") will not be subject to liability for, or the subject of any actions, claims, orders, demands, enforcement actions or other civil or administrative proceedings, including without limitation, any investigation, monitoring or remediation requirements, related to or arising from the Known Conditions as of the date this Mutual Release is fully executed ("Effective Date").

II. DEFINITIONS

For purposes of this Mutual Release, "Known Conditions" means all conditions of pollution at, under, or originating from the Property or any portion thereof, that was known to the Central Valley Water Board prior to the Effective Date. The term "known to the Central

Valley Water Board” means all information regarding the pollution at, under, or originating from the Property, or any portion thereof, that was disclosed to the Central Valley Water Board or is reasonably discernible from the reports listed in Cleanup and Abatement Order R5-2007-0717, the Resolution, or the investigations, work plans, reports, or any other information submitted to the Central Valley Water Board prior to the Effective Date.

III. FINDINGS OF FACT

This Mutual Release is based on the findings made by the Central Valley Water Board in Resolution _____, and on the following findings by Central Valley Water Board staff:

1. The Property is within the jurisdiction of the Central Valley Water Board due to the Known Conditions and is subject to the provisions of Central Valley Water Board Order R5-2007-0717 (the “Order”). The Central Valley Water Board enters into this Mutual Release pursuant to California Water Code sections 13000 et seq. The Central Valley Water Board has authority to release and covenant not to sue or assert claims for environmental investigation or remediation or other related claims against potentially responsible dischargers at environmentally impacted properties, where, as here, the agreement is sufficiently in the public interest.
2. The current owner of the Property, Shirley Chacon. (“Chacon”) is named, as is Tom Green, Trustee for the Ethel E. Green Trust (Green) pursuant to the Order, as discharger.
3. The City is not a responsible party or affiliated with a responsible party for the Known Conditions, and the sole interest of City in the Property is to facilitate cleanup of the Property to eliminate the public health threat posed by the Property and allow beneficial redevelopment. Current plans call for the City to eventually take ownership of the Property for redevelopment into a public parking lot.
4. By entering into this Mutual Release, the City certifies that to the best of its knowledge and belief, it has fully and accurately disclosed to the Central Valley Water Board any and all information known to the City and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any existing contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Property.
5. This Mutual Release is consistent with the goals and purposes of the Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.).

IV. MUTUAL RELEASE AND COVENANT

1. In accordance with Resolution _____ and as recommended by Board staff, the Central Valley Water Board expressly finds that the Released Parties shall not be liable or otherwise responsible for such Known Conditions and hereby covenants and agrees not to initiate, bring, or support any claim, order, demand, enforcement action or other civil or administrative proceeding against the Released Parties arising out of or related to such Known Conditions under any local, state or federal statute or the common law, including but not limited to, in their entirety, the United States Code, the various California Codes, or other applicable laws, regulations, ordinances, or civil, judicial or administrative authorities, having application to the handling, release, presence, migration, cleanup, containment or maintenance of the Known Conditions at, on, under or originating from the Property, or any portion thereof.
2. In partial consideration for this Mutual Release, the Released Parties promise to coordinate and complete remedial activities on the Property, with the intention that the City's expenditures will be reimbursed by the claimant pursuant to the Agreement. In further consideration for this Mutual Release, the Released parties hereby release and covenant not to sue the Central Valley Water Board, its authorized officers, employees or representatives, with respect to any and all liability or claims associated with or arising out of the Known Conditions.
3. Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, Liability and Recovery Act of 1980 (42 U.S.C. § 9613(f)(2).) provides that: "A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement." Accordingly, the Central Valley Water Board affirms that this Mutual Release and Covenant Not To Sue resolves the Released Parties' liability to the Central Valley Water Board with regard to any claims related to the matters included in the Order and Resolution _____, including all claims regarding the handling, storage, presence, migration, cleanup, or disposal of the Known Conditions at, under, or originating from the Property.
4. This Release shall be without prejudice to the ability of the Central Valley Water Board to take action against any party other than the Released Parties, relating to the investigation, cleanup, or cost of investigation or cleanup of the Known Conditions.
5. Notwithstanding any other provisions of this Mutual Release, the Central Valley Water Board reserves the right to assert any claims, enforcement actions or other civil or administrative proceedings against the respective Released Parties relating to the acts or omissions of the Released Parties arising after the Effective Date and which are based on the failure of the respective Released Parties, to the extent they have control over the Property, to (i) exercise due care at the Property with

respect to the Known Conditions, (ii) comply with the requirements and conditions of the Mutual Release, (iii) comply with any deed restrictions and/or institutional constraints currently imposed or that may be subsequently imposed pursuant to Central Valley Water Board order, and, (iv) cooperate in providing reasonable access to the Property for remediation and monitoring purposes and construction, maintenance, and repair of any necessary remediation and/or monitoring system required by the Central Valley Water Board pursuant to Central Valley Water Board orders. If the Central Valley Water Board determines that a Released party has failed to comply with any of these four enumerated requirements, and the Central Valley Water Board elects to proceed against that Released Party, then this Mutual Release shall be suspended as to that Released Party, and the Central Valley Water Board and the Released Party shall then have any rights or defenses they would have had if this Mutual Release and Covenant Not to Sue had not existed.

6. This Mutual Release may be executed in one or more counterparts, each such counterpart being deemed an original but all counterparts constituting a single instrument.
7. Each of the undersigned parties hereby certifies, and warrants that he or she is authorized to bind his or her agency or entity to the continuing obligations described herein, and that the foregoing is a full, true and correct copy of Attachment 1 to Resolution _____, Mutual Release and Covenant Not To Sue adopted by the California Regional Water Quality Control Board, Central Valley Region, on _____

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

By: _____

Date: _____

CITY OF SHASTA LAKE REDEVELOPMENT AGENCY

By: _____

Title: _____

Date: _____